IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 03-555
	:	
JOHN VITILLO, ET AL.	:	

SURRICK, J. **OCTOBER 4, 2005**

MEMORANDUM & ORDER

Presently before the Court are Defendants John Vitillo, Vitillo Corporation, and Vitillo Engineering, Inc.'s ("Vitillo") Motion To Stay Sentence Pending Appeal (Doc. No. 115), the Government's Reply To Defendants' Motion To Stay Sentence Pending Appeal (Doc. No. 116), and Defendants' Reply To Government's Reply To Motion To Stay Sentence Pending Appeal (Doc. No. 121). For the following reasons, Defendants' Motion will be denied.

I. BACKGROUND

On August 28, 2003, John Vitillo, Vitillo Corporation, and Vitillo Engineering, Inc., were indicted on three counts of violating 18 U.S.C. § 666(a)(1)(A), theft from a program receiving federal funds. (Doc. No. 1.) The Government filed a superseding indictment on May 18, 2004, which added a count against the Defendants for conspiracy in violation of 18 U.S.C. § 371. (Doc. No. 26.) On July 13, 2004, the Government filed a second superseding indictment ("Indictment") which contained the same conspiracy and theft counts as the prior superseding

indictment plus facts related to sentencing.[1] (Doc. No. 36.) After a jury trial, each Defendant was found guilty of all charges.

On December 1, 2004, Defendants timely filed a motion for a new trial pursuant to Federal Rule of Criminal Procedure 33(a). (Doc. No. 79.) On April 29, 2005, we filed a Memorandum and Order denying that motion. *United States v. Vitillo*, Crim. No. 03-555, 2005 U.S. Dist. LEXIS 7558 (E.D. Pa. Apr. 29, 2005). On June 1, 2005, Defendants filed a Motion to Dismiss Indictment for Lack of Jurisdiction and for Judgment Notwithstanding the Jury's Verdict (Doc. No. 95), arguing that the Indictment did not allege a violation of 18 U.S.C. § 666(a)(1)(A). (*Id.* at 1.) Defendants asserted that they could not have violated 18 U.S.C. § 666(a)(1)(A), even if the Government established each of the facts alleged in the Indictment, and that this Court therefore lacked jurisdiction. (*See id.* ("Because the Indictment fails to allege a federal offense, the district court lacks the subject matter jurisdiction necessary to try the Defendants for this crime.").) On July 19, 2005, we filed a Memorandum and Order denying that motion. *United States v. Vitillo*, Crim. No. 03-555, 2005 U.S. Dist. LEXIS 14571 (E.D. Pa. July 19, 2005). On September 12, 2005, John Vitillo was sentenced to thirty-six months imprisonment followed by a period of supervised release of two years. He was also directed to make restitution in the amount of $317,760.00. Vitillo Corporation and Vitillo Engineering, Inc. were each sentenced to five years probation and were directed to make restitution in the sum of $317,760.00. (Doc. Nos. 106, 108, 110.)[2] On September 20, 2005, Defendants filed a Notice of Appeal. (Doc. No. 111.)

[1] The second superseding indictment was in response to *Blakely v. Washington*, 124 S. Ct. 2531 (2004).

[2] Defendants were ordered to pay restitution jointly and severally at a rate of $500.00 per month while John Vitillo is incarcerated with the balance to be paid in full within 12 months

On September 21, 2005, Defendants filed the instant Motion to Stay Sentence Pending Appeal. They argue that the issues raised in their June 1, 2005 Motion constitute "substantial question[s] of law or fact likely to result in reversal." (Doc. No. 115 (quoting 18 U.S.C. § 3143(b)(B) (2000)).) As a result, Defendants move the Court for a stay of their sentences pending the outcome of their appeal.

II. LEGAL STANDARD

Defendants filed the instant Motion pursuant to 18 U.S.C. § 3143(b), which allows a district court to stay a sentence pending appeal upon reaching certain conclusions about the defendant and the issues to be presented on appeal. The statute provides, in relevant part, as follows:

> (b) Release or detention pending appeal by the defendant.— (1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—
>
> (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and
>
> (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—
>
> (i) reversal,
>
> (ii) an order for a new trial,
>
> (iii) a sentence that does not include a term of imprisonment, or
>
> (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C. § 3143(b) (2000).

In its response to Vitillo's Motion, the Government does not contend that Vitillo is likely to flee or that he poses a danger to any person or to the community. Vitillo has, without incident,

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after John Vitillo is released from prison.

remained on bail throughout these proceedings. (Doc. No. 4.) Therefore, the conditions of 18 U.S.C. § 3143(b)(A) have been met. In addition, while we question whether Defendants' instant Motion is merely an attempt to delay, which under subsection (B) of the Statute, would, on its own, preclude a stay of sentence, we will, nevertheless, assume that the appeal is not a dilatory tactic. Accordingly, the question before us now is whether the issues to be raised by Defendants on appeal, in fact, constitute "substantial question[s] of law or fact likely to result in reversal" such that a stay of Defendants' sentences is appropriate.

In analyzing this question, we look to the Third Circuit, which has produced two of the most widely cited opinions on this statute. While a number of other circuits have considered the proper construction of 18 U.S.C. § 3143, nearly all of the cases look to *United States v. Miller*, 753 F.2d 19 (3d Cir. 1985), and/or *United States v. Smith*, 793 F.2d 85 (3d Cir. 1986), for guidance. In construing § 3143, *Miller* sought to effectuate Congressional intent, recalling that 18 U.S.C. § 3143, the Bail Reform Act of 1984, "was enacted because Congress wished to reverse the presumption in favor of bail that had been established under the prior statute, the Bail Reform Act of 1966." *Miller*, 753 F.2d at 22. In analyzing Defendants' Motion under this statute, we must consider whether Defendants have successfully rebutted the presumption in favor of denying bail on appeal. *See United States v. Brown*, 356 F. Supp. 2d 470, 484 (M.D. Pa. 2005).

The *Miller* court construed § 3143 to establish a four-part test to determine whether a stay of sentence is appropriate under the statute. Under that test, a defendant must prove:

> (1) that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released; (2) that the appeal is not for purposes of delay; (3) that the appeal raises a substantial question of law or fact; and (4)

> that if the substantial question is determined favorably to defendant on appeal, that decision is likely to result in reversal . . . .

Miller, 753 F.2d at 24. Having determined that Defendants do not pose a flight risk, that they are not dangerous, and that the appeal is not merely a dilatory tactic, we must focus on *Miller*'s interpretation of the third element, the meaning of a "substantial question of law or fact."

According to *Miller*, a "substantial question" is one which is "either novel, which has not been decided by controlling precedent, or which is fairly doubtful." *Id.* at 23. One year after the Third Circuit decided *Miller*, it clarified this definition in *Smith* : "Our definition of a substantial question requires that the issue on appeal be *significant* in addition to being novel, not governed by controlling precedent or fairly doubtful." *Smith*, 793 F.2d at 88. In making this clarification, the Third Circuit explicitly rejected the Eleventh Circuit's approach in *United States v. Giancola*, 754 F.2d 898 (11th Cir. 1985), which held that a substantial question is "a close question or one that very well could be decided the other way." *Id.* at 901. Instead, the Third Circuit chose to align itself with the Ninth Circuit, which, in *United States v. Handy*, 761 F.2d 1279 (9th Cir. 1985), advocated "the historically-based 'fairly debatable' interpretation of the term 'substantial.'" *Smith*, 793 F.2d at 89, 90. "Fairly debatable," *Smith* determined, means that the issue is "debatable among jurists of reason" or "adequate to deserve encouragement to proceed further." *Id.* (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). Thus, *Smith* requires that courts assess first whether the question is novel, then, if there is no controlling precedent, whether a significant question or one that is "debatable among jurists of reason" is posed. Finally, if a significant question is found, the court must then determine if the question is integral to the merits of the case and would ultimately lead to a reversal. *Id.* at 90.

III. LEGAL ANALYSIS

Defendants challenge this Court's refusal to dismiss the indictment brought under 18 U.S.C. § 666(a)(1)(A).[3] Defendants contend that the statute does not apply to them for three reasons. First, Defendants claim that John Vitillo and the Vitillo corporate entities were not in control of any federal money, presumably suggesting that such control is a required element of the offense under § 666(a). (Doc. No. 115.) Next, they argue that Defendants were engaged in bona fide commercial transactions, relying on subsection (c) of the statute, and suggesting that because the underlying arrangement between Defendants and the Reading Regional Airport Authority ("RRAA") was a business arrangement, any fraudulent activity is thus exempted from

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[3] Section 666(a) provides in relevant part:

> (a) Whoever, if the circumstance described in subsection (b) of this section exists–
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> (1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof–
>
> (A) embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property that–
>
> (i) is valued at $5,000 or more, and
>
> (ii) is owned by, or is under the care, custody, or control of such organization, government, or agency . . .
>
> shall be fined under this title, imprisoned not more than 10 years, or both.
>
> (b) The circumstances referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.
>
> (c) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business.

18 U.S.C. § 666(a) (2000).

prosecution under § 666(a). (*Id.*) Finally, Defendants claim that they cannot be deemed agents of the RRAA and, as a result, are not covered by § 666(a). (*Id.*) Defendants argue that based upon the foregoing, no federal crime was committed, and that this Court lacked subject matter jurisdiction. Defendants argue that their claims raise substantial questions of law justifying a stay of their sentences pursuant to 18 U.S.C. § 3143.

The Government counters that under 18 U.S.C. § 666(a), the Defendants need not have direct control over federal money in order to be prosecuted for the offenses proscribed by that statute. In addition, the Government contends that while Defendants were engaged in a commercial transaction with the RRAA, Defendants' "fraudulent billing based upon phony reports of hours worked" cannot be considered "bona fide" wages, fees, or compensation "in the usual course of business" and thus cannot be exempted from § 666's coverage. Finally, the Government points to allegations in the indictment, as well as evidence and testimony introduced at trial that it contends demonstrate, without question, that Defendants were agents of the RRAA as contemplated by § 666. (Doc. No. 116.)

We will address each of the issues raised by Defendants and assess their import under 18 U.S.C. § 3143 to determine whether they present novel and substantial questions of law or fact likely to result in reversal.

A. Issue of Novelty of Defendants' Claims

The first element of the § 3143 inquiry is the assessment of the novelty of the question that will be raised by the defendant on appeal. While there is clearly case law that informed the Court's decision in the July 19, 2005 Memorandum and Order denying Defendants' Motion to

Dismiss the Indictment, there was no case directly on point.[4] Because there is no controlling precedent dealing specifically with an independent contractor that was prosecuted under 18 U.S.C. § 666 for defrauding an organization that received federal monetary grants, we must conclude based upon *Miller*that this case presents a novel issue of law with no directly controlling precedent. However, that conclusion does not end the inquiry. *Smith* instructs that we must now consider whether that novel question is significant or fairly debatable such that it qualifies as a substantial question under the Bail Reform Act.

B. Control of Federal Funds Under 18 U.S.C. § 666(a)(1)(A)

Defendants base their claim that 18 U.S.C. § 666(a)(1)(A) cannot apply to them on the contention that they did not receive benefits as defined by the statute. As we explained in the Memorandum and Order of July 19, 2005, however, under § 666(b), the Government must show that an "*organization, government, or agency* receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance." 18 U.S.C. § 666(b) (2000) (emphasis added). In the context of § 666, the term "benefits" is used to identify which entities are protected under the statute. The person or entity committing the offense need not have direct control over the federal benefits or money. In fact, the statute explicitly describes the nature of the property that is the subject of the offense (theft, embezzlement, or fraud) under § 666. The property must simply be: "valued at $5,000 or more" and "owned by or under the care, custody, or control of such organization, government, or agency." 18 U.S.C. § 666(a)(1)(A) (2000). There is no

[4] The Memorandum and Order of July 19, 2005, provides a full discussion of the law applicable to the issues raised by Defendants in their Motion To Dismiss The Indictment.

requirement that the offender have control over federal money. The offender must simply be an agent of and commit theft from or fraud on the protected entity that itself received federal benefits. *Id.* § 666(a)(1). The statute is clear on its face in this regard and Defendants have provided no authority to the contrary. They have provided not a single case suggesting that in order to be prosecuted under § 666(a)(1)(A), the offender must himself control or benefit from federal money. Instead, they point to *United States v. Bigler*, 907 F. Supp. 401 (S.D. Fla. 1995), a case that discusses the bribery section of the statute, § 666(a)(1)(B), not the crime of theft or embezzlement which is the subject of § 666(a)(1)(A) and this case. Moreover, while Defendants refer to a passage in *Bigler*stating that the intent of § 666 is to police those with control of federal funds, the passage is taken out of context and is itself a reference to *United States v. Simas*, 937 F.2d 459 (9th Cir. 1991), which explicitly states: "The broad language of 18 U.S.C. § 666 does not require a tracing of federal funds to the project affected by the bribe or a showing that the defendant had the authority to administer federal funds." *Id.* at 463. Thus, on the issue of Defendants' lack of control over federal funds, it is clear that this is not a required element under § 666 and most certainly does not present a substantial question of law under § 3143.

C. Bona Fide Commercial Transactions Under 18 U.S.C. § 666(a)(1)(A)

Defendants next claim that the underlying arrangement with the RRAA constituted "bona fide commercial transactions" and that therefore the fraudulent invoices are exempt from 18 U.S.C. § 666's application according to subsection (c) of the statute.[5] (Doc. No. 115.) As we concluded in the Memorandum and Order of July 19, 2005, this argument fails as well. The

[5] Our Memorandum and Order dated November 2, 2004, which dealt with the motion in limine filed by the Government also discussed the application of §666(c) and the cases related thereto.

cases that have interpreted § 666(c) have consistently held that acts of fraud are not bona fide payments made in the usual course of business. In concluding that § 666(c) was not unconstitutionally vague, the Eleventh Circuit in *United States v. Edgar*, 304 F.3d 1320 (11th Cir. 2002), observed that

> any reasonable person would understand that the phrase "usual course of business" in § 666(c) would not bar prosecution for the conduct alleged in the § 666 counts in the Indictment. Among the transactions for which [defendant] was convicted were the following: converting hospital monies into unauthorized bonuses to himself; profiting from the Hospital's use of a warehouse that he, [his co-defendant], and another officer in effect sold to the Hospital on two separate occasions; participating in the diversion of Hospital funds to himself and others through the use of fictional invoices; collecting a finder's fee from the Hospital in connection with an investment of the Hospital's parent company; using Hospital monies to pay premiums on insurance policies for which he was solely responsible; and profiting from the Hospital's purchase, at an inflated price, of a real estate option from a partnership in which he held an undisclosed interest. Any reasonable person would understand that the funds involved in these transactions could not be construed as lawful payments or reimbursements made in the "usual course of business."

Id. at 1328; *see also United States v. Urlacher*, 979 F.2d 935, 938 (2d Cir. 1992) (holding that § 666(c) did not exempt from coverage the intentional misapplication of funds, even for legitimate purposes); *United States v. Abney*, Crim. No. 3-97-260, 1998 WL 246636, at *2 (N.D. Tex. Jan. 5, 1998) (holding that § 666(c) did not apply where defendants altered time sheets to receive payment for overtime hours that were never worked); *United States v. Stout*, Nos. Civ. A. 93-2289, Cr. 89-317, 1994 WL 90025, at *5 (E.D. Pa. Mar. 21, 1994) (holding that § 666(c) exception did not apply to defendant who had "created" ghost employees and sought reimbursement for their employment).

In this case, the Defendants were found guilty of engaging in a course of fraudulent conduct by intentionally submitting to the RRAA false invoices based upon fabricated billing

records that overreported the number of hours actually worked on the airport expansion project. As with the improper practices in *Edgar*, any reasonable person would understand that the funds involved in the payment of these fraudulent invoices and bills cannot be construed as lawful payments or "bona fide salary, wages, fees, or other compensation paid . . . in the usual course of business." Thus, on this claim too, we are compelled to conclude that Defendants have not presented a significant question or issue that is debatable among jurists of reason.

D. Agency Element of § 666(a)(1)(A) Offense

Finally, the Vitillo Defendants contend that § 666(a)(1)(A) cannot apply to them because they were not agents of the RRAA. Defendants assert that they "had no power to affect any relationship between the RRAA and any third party." (Doc. No. 115 at 6.) The Government responds that the Indictment alleged and the evidence submitted at trial demonstrated conclusively that the Defendants were indeed agents as defined by § 666.

Section 666 specifically provides its own definition for the term "agent." An "agent" is "a person authorized to act on behalf of another person or a government and, in the case of an organization or government, includes a servant or employee, and a partner, director, officer, manager, and representative." 18 U.S.C. § 666(d) (2000). In considering the scope of the definition of the term "agent," Congress expressly declined to incorporate the definitions of agency found in the Restatement (Second) of Agency. *United States v. Toro*, No. 89 Cr. 0268, 1989 U.S. Dist. LEXIS 6449, at *3-4 (S.D.N.Y. June 8, 1989).[6] The critical agency inquiry

[6] The Legislative History of §666 states that the term "agent" is "defined in subsection (d) and requires no further explication." S. Rep. No. 98-225, at 369-70 (1983), *as reprinted in* 1983 U.S.C.C.A.N. 3182, 3510.

under this statutory definition is whether a person is "authorized to act on behalf of another person or a government," irrespective of whether that person is an employee of the entity receiving federal funds. The definition of agent in § 666 includes "persons who act as directors, managers, or representatives of covered organizations, even if those persons are not actually employed by the organization[] . . . ." *United States v. Sotomayer-Vazquez*, 249 F.3d 1, 8 (1st Cir. 2001). As the First Circuit explained in *Sotomayer-Vazquez*, "an outside consultant with significant managerial responsibility may pose as significant a threat to the integrity of federal funds as a manager actually employed by the agency in question." *Id.* In arriving at this conclusion, the court noted that "the inclusion of 'employee' in the statutory language as a separate qualification suggests that the definition of agent includes 'directors,' 'managers,' and 'representatives' who are not technically employees." *Id.*

The Indictment against the Defendants alleges that an agency relationship existed between the RRAA Defendants. The Indictment states:

> In or about October 1997, Vitillo Group, Inc. was appointed by the Authority as the primary engineer and principal engineer consultant for the Authority and the RRAA. In or about April 1998, defendant VITILLO ENGINEERING, INC. assumed Vitillo Group, Inc.'s duties within the Authority and the RRAA. Defendant VITILLO ENGINEERING, INC. submitted its bills for services to the Authority through defendant VITILLO CORPORATION. . . .
>
> On or about December 10, 1998, a contract was signed between the Authority and defendant JOHN VITILLO making defendant VITILLO ENGINEERING, INC. the construction manager of the RRAA Expansion Project with compensation to paid [sic] to defendant VITILLO ENGINEERING, INC based upon the number of hours worked by its employees.

(Doc. No. 36 at 3.) These averments certainly support the § 666(a)(1)(A) charge against the Defendants. They demonstrate that the Vitillo Defendants were "authorized to act on behalf of"

the RRAA. We are satisfied that the specific facts alleged in the Indictment regarding the Defendants' agency relationship with the RRAA fall well within the scope of § 666(a)(1)(A).

In arguing that they were not agents of the RRAA, Defendants, in their Motion to Dismiss the Indictment, relied on evidence which is outside of the four corners of the Indictment, including language contained in the Engineering Consulting Agreement ("Agreement") that was entered into between the RRAA and Vitillo Group, Inc. As we discussed in the Memorandum and Order of July 19, 2005, if one makes a careful review of the full record in this case, one cannot fail to see that it provides more than sufficient evidence of the fact that the Defendants were agents of the RRAA as defined by § 666. The Agreement itself conferred broad authority on the Vitillo Group, Inc., stating that "VITILLO, as primary engineer and principal engineering consultant, shall coordinate and oversee all work and VITILLO shall have the overall responsibility for the acceptability and quality of all work performed." (Doc. No. 95 Ex. A at 1.) In performing in accordance with the contract, Defendants were obviously representatives, acting on behalf of the RRAA. In addition, the expert report of Stephen E. Fournier, P.E., Defendants' expert, reinforces the fact that the Defendants received broad authority from the RRAA. Fournier's report asserts that:

> As part of the construction management responsibilities, VITILLO and their design subcontractor BH/BA prepared bid documents, evaluated proposals from potential prime contractors, and provided recommendations to RRAA for award of the contracts. RRAA then awarded the following prime contracts for the Terminal Expansion Project.
>
> General Contractor - Gordon Baver, Inc.
> Kitchen Equipment - Singer Equipment Company
> Plumbing and Fire Protection - BNB Mechanical
> HVAC - Bohrer-Reagan (a subsidiary of Medlar Electric)
> Electrical - Medlar Electric

> It is important to note that these prime contractors had contracts with RRAA and not VITILLO. VITILLO was the construction manager and was responsible for assuring the Terminal Expansion Project work scope was performed in a quality manner and within the schedule proposed by RRAA.

(Fournier Expert Rep. at 3-4.) Thus, Defendants' own expert concluded that the Defendants were authorized to act on behalf of the RRAA regarding management of the expansion project, including oversight of contractors which had contracts with the RRAA.[7] The Defendants' relationship with the RRAA, as averred in the Indictment and as reflected by the record, clearly demonstrates that they were agents of the RRAA as contemplated by § 666.

Defendants rely on two cases, *United States v. Ferber*, 966 F. Supp. 90 (D. Mass. 1997), and *United States v. Webb*, 691 F. Supp. 1164 (N.D. Ill. 1988), in support of their claim that Vitillo and the Vitillo corporate entities were not agents under § 666. Both of these cases are easily distinguished. In *Ferber*, the district court found that the defendant, a financial advisor to the Massachusetts Water Resources Authority, was not an agent of that governmental entity for

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[7] In fact, John Vitillo sent a letter to Singer Equipment Company, one of the prime contractors, memorializing a January 9, 2000, emergency meeting at the RRAA regarding "design and scheduling problems in the restaurant" at the airport. (Tr. Ex. D-56.) In that letter, Vitillo stated that:

> Both you and the Project Architect pledged full cooperation in expediting your work to meet the current construction schedule requiring the start of activities in the kitchen area by February 1, 2000 and completion within (5) weeks.
>
> In order to comply with this schedule, you have agreed to submit complete final shop drawings of improvements for the kitchen area, bar, storage area, receiving prep area, cooler, restaurant and snack bar by January 10, 2000. You also assured all in attendance that you will have your equipment delivered on-site by March 1, 2000, or earlier, in accordance with your earlier commitment.

(*Id.*) This letter is further evidence that the Vitillo Defendants indeed acted as agents of the RRAA regarding the airport expansion project.

the purposes of prosecution under § 666. *Ferber*, 966 F. Supp. at 101. Instead, the court held, "[t]he government's evidence . . . consistently showed that Ferber's role was solely advisory in nature." *Id.* at 100. In contrast to the role of a financial advisor, evidence at Defendants' trial clearly demonstrates that Vitillo and the Vitillo corporate entities were authorized to act on behalf of the RRAA and were actively managing the expansion project. Vitillo was not a mere advisor but instead acted as the RRAA's representative in coordinating work with subcontractors. Moreover, in concluding that the financial advisor was not an agent of the Authority, the court in *Ferber* went well beyond the statutory definition of "agent" in §666(d) and, in fact, used the definition found in the Restatement (Second) of Agency §§12-14.

Defendants' reliance on *Webb* is also misplaced. As we discussed in the Memorandum and Order of July 19, 2005, in *Webb*, the issue was whether Hill Taylor, a private accounting firm hired by the United States Department of Housing and Urban Development ("HUD"), was a covered entity for purposes of § 666, and not whether the defendant was an agent of that organization. The *Webb* court held that "Hill Taylor was not the sort of organization which Congress intended to cover in enacting § 666" because the federal money to which Hill Taylor had access, Section 8 rents, could not be considered benefits for purposes of 18 U.S.C. § 666. *Webb*, 691 F. Supp. at 1169-70. Defendants' use of this case to support their argument that they were not agents of RRAA is simply wrong. Moreover, *Webb* provides little help to Defendants, since they do not dispute the fact that the RRAA received federal benefits and that it was a covered entity for purposes of § 666. Because Defendants' claim that they were not agents of the RRAA finds no support in the law or the evidence submitted at trial, we are compelled to

conclude that this claim also is not debatable among jurists of reason and, therefore does not present a substantial question of law for purposes of the Bail Reform Act.

IV. Conclusion

It is clear that Defendants have failed to present substantial questions of law or fact in this case. The applicability of 18 U.S.C. § 666 to John Vitillo and the Vitillo corporate entities is not fairly debatable among jurists of reason.[8] Since we have concluded pursuant to 18 U.S.C. §3143(b) that no substantial question of law or fact exists, a stay of Defendants' sentences pending appeal would be inappropriate. Accordingly, Defendants' Motion will be denied.

An appropriate Order follows.

[8] For examples of other cases in which the Court has failed to find a substantial question of law or fact for purposes of the Bail Reform Act, see *United States v. Rubashkin*, Crim. No. 02-333-01, 2003 WL 1493967 (E.D. Pa. Mar. 19, 2003); *United States v. Gordon*, Crim. No. 92-00386, 1993 WL 23788 (E.D. Pa. Feb. 2, 1993); *United States v. Franchi*, 786 F. Supp. 520 (W.D. Pa. 1991). *But see United States v. Di Tullio*, Crim. A. No. 87-286-01, 1988 WL 29316 (E.D. Pa. March 24, 1988) (granting stay of sentence because of a fairly debatable question evidenced by conflict among the circuits).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO. 03-555
	:	
JOHN VITILLO, ET AL.	:	

ORDER

AND NOW, this 4th day of October, 2005, upon consideration of Defendants John Vitillo, Vitillo Corporation, and Vitillo Engineering, Inc.'s ("Vitillo") Motion to Stay Sentence Pending Appeal (Doc. No. 115, No. 03-CR-555), and all papers submitted in support thereof and in opposition thereto, it is ORDERED that Defendants' Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge